IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 130 OF 2005

Central Bureau of Investigation
Anti Corruption Branch
Surekha Building
Near Doordarshan Kendra,
Altinho, Panaji, Goa. ... Applicant

versus

1. Shri Bhimraj Sagar
   Permanent Address:
   16/692, H. Bapa Nagar,
   Military Road, Karol Bagh,
   New Delhi - 110 005.

2. State of Goa. ... Respondents

Mr. Joseph Vaz, Special Public Prosecutor for the Applicant.

Mr. Sudin Usgaonkar, Advocate for the Respondent No.1.

Mr. S. N. Sardessai, Public Prosecutor for the Respondent No.2.

CORAM : N. A. BRITTO, J.

DATE : 15TH NOVEMBER,2005.

ORAL ORDER

Heard Mr. Joseph Vaz, the learned Special Public

Prosecutor appearing on behalf of the applicant/complainant and Mr. Sudin Usgaonkar, the learned Counsel appearing on behalf of the respondent no.1/accused.

2. By application dated 4-7-2005 the complainant has sought to condone the delay of 119 days to prefer an application for leave to appeal.

3. The Judgment of acquittal was passed on 1-12-2004 by the learned Special Judge, Margao and on the same day, a certified copy of the said Judgment was applied for by the complainant which was delivered to the complainant on 6-12-2004. The complainant has set out in para 6 of the application the movement of the file which was required to be moved with a view to obtain approval to file an application for special leave and a perusal of the said para shows that the file moved from one desk to another or from one officer to the other with a reasonable speed except from 11-3-2005 to 1-6-2005 when on the first date the Director(Vigilance) Department of Personnel & Training, New Delhi wrote to the Under Secretary of

the Department of Personnel & Training to obtain the recommendations of the C.B.I. to file the appeal.

4. Mr. Vaz, the learned Special Public Prosecutor has submitted that at that level, files from all over the country are being processed and for that reason, there was some delay. Mr. Vaz has also referred to a Division Bench Judgment of the Punjab and Haryana High Court in the case of **Haryana State Board for Prevention and Control of Water Pollution, Chandigarh** v. **M/s. Jai Bharat Woollen Finishing Works, Panipat and others**(1993 CRI.L.J.384) and has submitted that since the facts stated on behalf of the complainant have not been controverted and the delay has been satisfactorily explained, this is a fit case to condone the same.

5. On the other hand, Mr. Usgaonkar, the learned Counsel appearing on behalf of the respondent no.1/accused has referred to a Judgment of the Division Bench of Gauhati High Court in the case of **State of Tripura and others** v. **Tripura Technical Employees' Association Agartala and another**(2004 AIHC 2080) and has submitted that there has been unexplained

delay on the part of the complainant, in preferring the application for leave to appeal considering that law gives the complainant only time of 60 days to file an application for seeking leave to appeal. Relying on the said Judgment, Mr. Usgaonkar has submitted that the Government Officers cannot be allowed to have a misconceived notion that the Court would condone any inordinate delay for mere asking.

6. Indeed, the learned Division Bench in the case of **State of Tripura and others** v. **Tripura Technical Employees' Association Agartala and another**(supra) observed, and in my view rightly, that there is a tendency on the part of the Government Departments to take for granted the matter of condonation of delay in view of the liberal approach made by the superior Courts on the ground of impersonal nature of functioning of the Government and that no urgency appears to be accorded to Court cases perhaps on the misconceived notion on the part of the concerned Government officials that even inordinate delay would be condoned at a mere asking thereby frustrating the very object of enacting the Law of limitation. The Division Bench then noted that there was no evidence of promptness in the activities of the officials of the appellants for the period between 5-5-2003 and 27-5-2003 inasmuch as no evidence was

also produced to show that the counsel for the appellants was ill during that period and though the Court did not insist that day to day delay of 70 days ought to be explained the explanation provided only unmask a desperate attempt to sweep their patent lapses under the carpet. It may be noted that the said case pertained to the Departments of the State of Tripura who had to process the presentation of appeals and were otherwise situated in the same Secretariat, which is not the case at hand.

7. The learned Division Bench in the case of **State of Tripura and others** v. **Tripura Technical Employees' Association Agartala and another** (supra) did take into consideration the Judgments of the Apex Court in **G. Ramegowda** v. **Special Land Acquisition Officer**(AIR 1988 SC 897) wherein it was observed that procedural nature was implicit in the nature of Government functions and procedural delay was also incidental to the decision making process and on that count it would be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. In the case of **State of Nagaland** v. **Lipok AO and others** (2005 (2) Crimes 38(SC)) the Apex Court has again held that the proof by sufficient cause is a condition precedent for exercise of the extraordinary restriction vested in the Court. The Supreme Court has again reiterated the principle that what counts is not the length of the delay but

the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. The Apex Court referred to its earlier decision in the case of **N. Balakrishnan** v. **M. Krishnamurthy**(AIR 1998 SC 3222) and observed that Section 5 is to be construed liberally so as to do substantial justice to the parties and this provision contemplates that the Court has to go in the position of the person concerned and to find out that if the delay has been resulted from the cause which he had adduced and whether the cause has been recorded in the peculiar circumstances of the case was sufficient. The Court also noted that it is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay/intentional or otherwise - is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature and, therefore, certain amount of latitude is not impermissible and if appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest and, therefore, the expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining everyday's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be

cognizant to and requires adoption of pragmatic approach in justice-oriented process and the Court should decide the matters on merits unless the case is hopelessly without merit. The Supreme Court again noted that an individual would always be quick in taking the decision whether he would pursue the matter by way of an appeal or application since he is a person legally injured while the State is an impersonal machinery working through its officers or servants.

8. As already noted, the statement made in para 6 of the application which is supported by an affidavit of the Inspector of Police, C.B.I.,A.C.B.,Goa shows that after the Judgment was pronounced a certified copy was immediately applied for and the matter of obtaining approval was pursued with right earnest and reasonable speed except for the said period from 11-3-2005 to 1-6-2005 when the file appears to have remained still. However, it is to be noted that in order to get approval to file the application for leave several Departments of the Central Government were involved, both in this State as well as at the Centre at New Delhi and considering the same, in my view, the time taken in the light of the explanation given, cannot be said to be unreasonable for the purpose of condoning the delay. The cause shown by the applicant is sufficient to

condone the delay and otherwise also it would be in the interest of justice to do so.

9. In the light of the above, the delay in filing the application for leave to appeal is condoned. Appeal to be registered.

N. A. BRITTO, J.

RD.